

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:07CV137-MU-02

JERRY D. SMITH,)
Plaintiff,)
)
v.) ORDER
)
JOE HENDERSON, former)
Deputy Sheriff at the)
Haywood County Jail;)
LUCRECIA RAY, Employee at)
the Haywood County)
Jail;)
Defendants.)
)

THIS MATTER comes before the Court on the "Answer Of Joe Henderson And Lucrecia Ray To Complaint And Counterclaim [by defendant Henderson]; Demand For Jury Trial," filed May 16, 2007.

As the record reflects, on April 16, 2007, the plaintiff, now an inmate in the custody of the North Carolina Department of Correction, filed a civil rights Complaint under 42 U.S.C. §1983 against four Haywood County Jail employees. However, upon its initial review, the Court determined that all of the allegations against two of the defendants were subject to dismissal for their failure to state a claim for relief; and that certain other of the allegations against the above-named defendants also were subject to dismissal for that reason.

On the other hand, the Court found that the plaintiff's allegations that defendant Henderson had assaulted him during an arrest was sufficient to withstand initial review. Likewise, the Court determined that defendant Ray should be required to respond to the plaintiff's claim that his "Native American Medicine bag" and a Bible were withheld from him on an occasion. To that end, on April 25, 2007, this Court entered an Order directing defendants Henderson and Ray to file an Answer to those specific claims.

Consequently, on May 16, 2007, the defendants' Answer was filed. By that Answer, defendants Henderson and Ray essentially deny the material aspects of the plaintiff's Complaint. In particular, defendant Henderson denies that he kicked or otherwise assaulted the plaintiff. On the contrary, defendant Henderson asserts that on the occasion that he arrested the plaintiff and was attempting to take him into custody, the plaintiff slipped his wrists out of the handcuffs and attacked defendant Henderson. Further, Henderson alleges that the plaintiff's initial attack caused him and the plaintiff to fall into a stream, where the plaintiff repeatedly struck Henderson and attempted to drown him by holding his head under water.

Most compelling of Henderson's account is his assertion that the plaintiff was convicted of that assault, and now is serving a lengthy prison term for that and an unrelated conviction.

Defendant Henderson also alleges that he suffered bodily and mental injuries from the plaintiff's assault; that he has been in the past, and will be required in the future to have medical treatment for those injuries; and that he has suffered a loss of income from that assault. Based upon that recitation, defendant Henderson has lodged a counterclaim for battery by which he is seeking damages from the plaintiff.

As for defendant Ray, she also denies that she unlawfully refused to give the plaintiff his "Native American medicine bag." On the contrary, the defendant asserts that a leather necklace with a small bag attached to it was retrieved from the plaintiff upon his intake at the Jail because that item was determined to be an unreasonable safety risk for the plaintiff, jail staff and other inmates at the Jail. Moreover, defendant Ray denies that the plaintiff was denied access to a Bible, claiming that a Bible is provided by the Gideons to each inmate who desires one. Ultimately, therefore, the defendants ask the Court to deny the plaintiff relief on his claims, and to award defendant Henderson damages on his counterclaim.

For its part, the Court has determined that the plaintiff should be required to respond to defendant Henderson's counter-claim; consequently, he will be directed to file such a response as hereafter set forth.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Clerk shall send a copy of this Order along with the defendants' "Answer . . . And Counterclaim; Demand For Jury Trial" to the plaintiff.

2. Within thirty (30) days of the date of this Order, the plaintiff shall file his Answer or other appropriate response to defendant Henderson's counterclaim. **Failure to respond as herein directed could subject the plaintiff to an entry of default judgment against him on defendant Henderson's counterclaim.**

SO ORDERED.

Signed: May 17, 2007



Graham C. Mullen
United States District Judge

